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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/695,550 | 10/28/2003 | Michael James Justin | 01053 | 5431 |
| 35467 | 7590 | 11/28/2007 | | |
| BIOMERIEUX, INC. PATENT DEPARTMENT 100 RODOLPHE STREET DURHAM, NC 27712 | | | EXAMINER LEVKOVICH, NATALIA A | |
| | | | ART UNIT 1797 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/695,550

Applicant(s)

JUSTIN ET AL.

Examiner

Natalia Levkovich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS; WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and remarks dated 09/10/2007 have been acknowledged by the Examiner.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Claim Rejections - 35 USC § 112

3. The 35 U.S.C. 112, second paragraph, rejection of claims 1 and 5 is withdrawn. In view of the 09/10/2007 amendments.
4. Claims 2, 4 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being unclear for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the sensor which detects the position of the test sample devices 'when the sensor detects the position of the position tracking feature formed in the carrier'. It is unclear what structural inter-relationships between the test sample devices and the position tracking feature in the carrier would provide for this functionality.

Claim 4, as amended, still does not set forth important structural inter-relationships between the elements, for example, between the motor-driven block and the servomotor.

The newly added claim 21 further recites a plurality of carrier position tracking sensors. It is unclear whether or not the recited sensors are the same as the sensors of claim 1.

Claim Rejections - 35 USC § 102

5. Claims 1-4 and 20-21 are rejected under 35 U.S.C. 102(b) as anticipated by Karl et al. (US 5891396).

Karl et al. disclose a transport system for automatic analyzer. Figures 6 and 17 show a transport sub-system comprising boat 22 loaded with cards 28 ['carriers'] accommodating sample wells 110 ['plurality of features for holding test sample devices'] filled with various types of growth media ['test sample devices']. The transport system further includes collar 40A ['block']; shaft 42; groove 36 ['guide'] parallel to the shaft; stepper motor 48 ['servomotor']; L-shaped "bearing mount" (not indexed) accommodating motor 54; the 'mount' having an opening ['threaded member', not indexed – Ex.] for engaging the shaft. Figure 17 also shows a plurality of optical interrupt apertures 112 ['slots / 'position tracking features formed in the carrier'] arranged in alignment with the wells 110. An optical interrupt detector ['position tracking sensor'] senses the radiation transmitted through the apertures 112 and "and sends a signal to the control

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system to cause the motor 708 to stop. When the motor 708 stops, the first column of wells 110 in the card 28 are positioned directly opposite a set of eight transmittance LEDs in the transmittance substation 802 which conduct transmittance testing of the column of wells in the card 28" (Col.18, lines 8-18; Col.18, lines 57-60).

Claim Rejections - 35 USC § 103

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Karl et al.

Although Karl does not teach 'wear strips', such friction protective elements are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have arranged such wear strips along the carrier path in the modified apparatus of Karl, in order to reduce the wear of working surfaces.

Response to Arguments

7. Applicant's arguments filed 09/10/2007 have been fully considered but they are not persuasive, or moot in view of new grounds of rejection.

Applicant argues that the system of Karl 'does not rely on a physical position tracking feature on the carrier, the position of which is detected by a sensor placed along the path of the carrier. Rather, in Karl, positioning of the

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boat 22 is solely dependent on counting steps of the stepper motors 48 as the boat 22 is maneuvered along the four sides of the instrument'. Examiner notes that the operation of the stepper motors is controlled by the servo-system which includes optical interrupt detectors (see, for example, Col.18, lines 8-18; Col.18, lines 57-60) and optical interrupt apertures / slots 112, capable of providing the recited functionality. Examiner also maintains that the apparatus of Karl includes all the structural features of the instant claims 1-4 and 20-21(see the discussion above). It would have been also within the ordinary skill of an artisan at the time the invention was made to have arranged wear strips along the carrier path in the modified apparatus of Karl, in order to reduce the wear of working surfaces.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory


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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jill Warden
Supervisory Patent Examiner
Technology Center 1700